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Regulatory Reform at MassDEP: **Progress Update and Plans for Additional Reforms**

October 10, 2012

I. Introduction:

In 2007, at the direction of Governor Patrick, the Massachusetts Department of Environmental Protection (MassDEP) initiated a permit streamlining program that cut review timelines across-the-board and also simplified the process for some key permit categories generally associated with significant economic development opportunities. In doing so, MassDEP met the Governor's goal of *permitting at the speed of business*. Building on this success, in April 2011, MassDEP launched a broad Regulatory Reform Initiative. The main goal of this far-reaching effort is to streamline permitting and other processes to boost efficiency so that MassDEP can maintain high standards of environmental protection despite a loss of almost thirty percent of its staff during the last decade. A second goal is to lighten the regulatory burden on business—but without lowering environmental protection standards. MassDEP's Regulatory Reform Initiative also fulfills the requirement in the 2010 Act Relative to Economic Development Reorganization for all Massachusetts state agencies to review existing regulations for efficiency improvements.

Since its launch, the Regulatory Reform Initiative has been one of MassDEP Commissioner Ken Kimmell's top priorities. In the early months of the initiative, MassDEP conducted an intensive, top-to-bottom review of all of the regulations under the agency's control. MassDEP solicited reform and efficiency ideas from hundreds of environmental advocates, business leaders, and municipal officials, in addition to the entire agency staff. Central to this effort was the establishment of an external Regulatory Reform Working Group consisting of representatives from each of these stakeholder areas to serve as key advisors. The best of the reform ideas

were proposed for implementation in a draft action plan that was released for public review and comment in late 2011.

MassDEP received very useful public input on the draft plan – which was primarily positive and substantively endorsed the reform proposals contained within it. The agency’s *Final Action Plan for Regulatory Reform at MassDEP* was published in March 2012. During the first half of 2012, MassDEP actively engaged with separate stakeholder groups for each of the targeted reforms in order to address more detailed stakeholder input, to consider any additional reforms that should be added beyond what was in the Final Action Plan, and to develop the pathway to implementation.

Commissioner Kimmell and others at MassDEP are proud to be prominently featured in Governor Patrick’s statewide regulatory reform efforts, and to help lead the way for other regulatory agencies. The agency has already put in place those reforms that were simple to implement, and MassDEP expects to substantially advance each of the remaining reforms in the coming months.

Below is a progress update on the reforms that were identified via the 2011 agency-wide assessment (which can be considered “Phase I” of the Governor’s State-wide Regulatory Reforms), and also an update on additional reforms that have been identified after the 2011 assessment and the resulting 2012 Action Plan (which can be considered “Phase II and Phase III” of the Governor’s state-wide reforms). This full suite of resulting reforms will include increased utilization of simplified or consolidated regulatory processes, new general permits, improved agency oversight procedures, and elimination of duplicative or low-benefit regulatory approvals. Together, they will save hundreds of hours of administrative time per year for the agency and lighten the regulatory burden, while continuing to provide top-notch protection of the environment and public health.

II. Progress Update on Final Action Plan for Regulatory Reform:

The 2012 *Action Plan for Regulatory Reform* can be found on MassDEP’s website at http://www.mass.gov/dep/about/priorities/regreform/actionplan_final.htm.

The following provides a status update on the reforms outlined in the 2012 Action Plan. Section III outlines additional reforms that the agency developed after the issuance of the Action Plan.

A. Reforms *Not* Requiring Regulation Changes:

A handful of reforms that were included in the March 2012 Action Plan could be implemented through modifications to MassDEP’s policies and/or operating procedures and did not require

amendments to regulations. These reforms are described below, along with the current status of each.

- Establishing a License Term Policy for Licenses under the Public Water Front Act/Chapter 91: MassDEP is developing a written policy to guide project applicants and agency staff in establishing license terms under the Public Water Front Act (c. 91) for non-water dependent use projects. Currently, license terms are individually negotiated, but by establishing expectations via written policy, the time spent by both MassDEP staff and by permit applicants on such negotiations will be reduced and there will be greater certainty and predictability. In addition, additional transparency will be brought to the individual negotiations around license terms. Agency staff have worked closely with a targeted group of external stakeholders, and the final draft policy is now undergoing review by agency leadership. A final policy will be released in the fall of 2012.
- Improved Targeting/Prioritization of MassDEP's Wetlands Program Activities: The Wetlands Protection Act gives local Conservation Commissions the authority to review work in or near wetlands, and gives MassDEP the oversight role over the work of these Conservation Commissions. Sometimes, this oversight can result in duplicative or low-value additional review. The agency is prioritizing a variety of its Wetlands Protection Act (WPA) program activities in order to reduce agency time spent on lower-value added tasks and to reduce delays for project proponents and Conservation Commissions. MassDEP personnel will now assign WPA File Numbers immediately upon submittal of a permit application to a local Conservation Commission, thus allowing Conservation Commissions to act without needing to wait for DEP review. MassDEP will strategically deploy its review of permits that are appealed in order to concentrate on projects with significant resource area impacts and conduct streamlined review of projects that solely impact the buffer zone or that involve minor residential alterations, thus ensuring adequate resources are dedicated to the projects with the highest potential for environmental harm. The agency completed discussions with stakeholders on these changes in the spring of 2012, and the resulting new operating procedures were implemented in August 2012.
- Compliance Improvements for Sanitary Groundwater Discharge Permittees: Permit holders will be required (via permit condition) to hire a certified professional to conduct a periodic compliance/structural assessment based upon new standardized review and inspection protocols. The agency will conduct compliance audits to ensure the effectiveness of these third-party facility assessments, and will retain a monitoring and enforcement role. In addition, MassDEP will be reducing the current levels of randomly-selected inspections to instead focus on sanitary groundwater discharge permittees that are likely to have compliance challenges based on actual discharge monitoring data. Facilities will be also be targeted for inspections

based on complaints received and on-going compliance/enforcement issues. These changes will enable MassDEP to more effectively utilize limited compliance and enforcement resources to increase compliance at these facilities. The Groundwater Discharge program reforms are undergoing final review within MassDEP and will be implemented in the fall of 2012.

- Streamlining Rideshare Program Reporting Requirements (310 CMR 7.16): The agency has been assessing opportunities to streamline and improve the employer reporting and survey requirements under the Massachusetts Rideshare program. In the spring of 2012, MassDEP convened a Rideshare stakeholder group that included MassCommute, the association of Massachusetts Transportation Management Associations (TMAs), TMA representatives, and MassDOT to recommend improvements to be implemented by the next reporting deadline of December 31, 2012. Based on this stakeholder engagement, MassDEP staff identified 10 program improvements which will lead to improved and streamlined reporting from the regulated community. MassDEP intends to implement these improvements by the December 2012 reporting deadline.

B. Reforms Requiring Regulation Changes:

Most of the proposed reforms identified in the Final Action plan require changes in regulation. Since the issuance of the Final Action Plan, MassDEP staff — in close coordination with targeted stakeholder groups — have been drafting, revising, and vetting regulation changes with MassDEP senior staff and leadership at the Executive Office of Energy and Environmental Affairs. Each of these proposed regulation changes are summarized below. MassDEP expects that all of the proposed draft regulation packages will be released for public comment by the end of the October 2012. As always, anyone who wishes to receive electronic notice when proposed regulations are released for public comment may do so by signing up for MassDEP's free Regulations Updates List-Serve (<http://www.mass.gov/dep/public/reglist.htm>).

- Eliminate Duplication for Sewer Extension & Connection Permits (314 CMR 7.00); and Improve Operation & Maintenance of Wastewater Treatment & Indirect Discharges (314 CMR 12.00): MassDEP intends to eliminate duplicative sewer permitting activities between local permitting entities and the agency. Current regulations require approval from MassDEP for connections to and extensions of local sewer collection systems in addition to a permit from the local municipality. The MassDEP approval typically does not apply different criteria nor add significantly different conditions than these local permits. These regulatory changes will eliminate this duplicative approval, thus saving permit application resources for project proponents, and enabling construction to begin immediately after obtaining a local permit. This will not reduce environmental protection, because the draft changes will also include required improvements to the operational requirements for wastewater treatment plants, covering issues such as on-going elimination of sewer line infiltration and steps to eliminate

current and future sewer overflows. Furthermore, the agency resource savings associated with eliminating these permit programs will also enable MassDEP to provide enhanced assistance to municipal and other system operators in addressing the program requirements noted above.

- Air/Asbestos Streamlining & Improvements (310 CMR 7.00): MassDEP regulates work to remove asbestos (an insulating material that poses health hazards if handled improperly) from buildings. These changes streamline asbestos abatement work practices, operation and maintenance procedures, and homeowner requirements. The revisions also align asbestos removal work practice requirements with the Mass. Department of Labor Standard's asbestos regulations and make the regulations clearer and more consistent with the U.S. EPA's asbestos standards. These revisions will benefit property owners, developers, the asbestos abatement industry and the general public. The changes will also provide MassDEP with greater flexibility to work with stakeholders to employ cost-effective and innovative solutions in asbestos abatement situations where one-size-fits-all approaches are not appropriate. Finally, these changes provide homeowner relief by exempting them from the prior notification requirements for projects that they conduct in their own homes that involve "non-friable" asbestos (a more stable form of the material). Homeowners will still be required to utilize safe work practices and to manage asbestos-containing waste material appropriately. This proposal will allow MassDEP to focus more resources on larger asbestos removal projects that present a higher risk to public health.
- Accelerated Reviews Under Massachusetts Public Waterfront Act/Chapter 91 (310 CMR 9.00): This proposal streamlines the application review timeline for large projects that are subject to review under both the Massachusetts Environmental Policy Act (MEPA) and Chapter 91 (a statute that authorizes MassDEP to issue licenses for development in tidelands in order to ensure protection and promotion of public use). These revisions will allow MassDEP to begin reviewing an application prior to receipt of the Secretary's Final Certificate in the MEPA process, saving 25 application review days. The proposed regulations will also clarify that a Wetlands Order of Conditions is not needed until final licensing, and will clarify the timeframe within which a public hearing must be held. The objective of these changes is to expedite the licensing process for those large projects subject to MEPA review and also to coordinate the Ch. 91 licensing process with the issuance of the MEPA Certificate.
- Wetlands Program Improvements (310 CMR 10.00) [Multiple Reforms]: Included in this group are three reforms to the Wetlands program. The first reform streamlines the review and permitting of access roadways for the development of renewable energy projects in areas subject to the Wetlands Protection Act (WPA). The proposed regulatory amendments add new "Limited Project" status for this kind of work. "Limited Projects" refer to projects that particularly promote a public interest. These projects are "permissible," despite non-

conformance with traditional performance standards, provided a review of reasonable alternatives has been conducted and a demonstration is made that adverse impacts will be minimized and mitigated. The second reform exempts from permitting certain specific, minor activities in the “buffer zone,” which is an area within 100 feet from the edge of the wetland. These minor activities include highway safety operation and maintenance work, and utility installation and maintenance work. In addition, this will facilitate the Commonwealth’s efforts in the aftermath of severe weather events to clear roadways and restore utility services, speeding emergency response and recovery. The third reform addresses those instances where stormwater management systems take on the soil and/or plant characteristics of a wetland and thereby create additional wetland resource areas and buffer zones that restrict development. This regulation change prevents this expansion of WPA jurisdiction, lessens the regulatory burden on developers, and therefore streamlines the development process without reducing environmental protection.

- Permitting Pathway for Test-Scale Projects – including Clean Energy -- Under Chapter 91 Public Waterfront Act (310 CMR 9.00); Water Quality Certification (314 CMR 9.00); and Wetlands (310 CMR 10.00): These changes will help in the review and permitting of test projects for innovative water-dependent technology, including new renewable energy technologies, in areas subject to Wetlands Protection Act (WPA) permitting, Chapter 91 licensing, and 401 Water Quality Certification requirements. The changes will provide a simplified permitting pathway for short-term tests of innovative technology in these areas. Presently, none of these regulations provide any provisions for the testing of new technology. Currently, new technology test projects must be permitted through standard permitting procedures, which include documenting the anticipated impacts of the project and demonstrating that the project will comply with the performance standards established for all structures. However, for pilot testing projects, the necessary data may not exist for this demonstration. Rather than asking in the application for all required data regarding the impacts of a new technology, permitting authorities will rely to a great extent on results of monitoring impacts of the new technology during the test. Modification or cessation of activity may be required by the permitting authority if monitoring indicates that the new technology has unforeseen and unacceptable impacts. The proposed regulations also provide that before the permit expires, the permittee shall remove the innovative technology and restore the test site to pre-test conditions.

- Reforms & Improvements for Solid Waste Transfer Stations and Landfills (310 CMR 19.000) [Two Reforms]: There are two broad reform areas proposed within MassDEP’s Solid Waste Management regulations. The first streamlines permitting procedures and agency review processes for certain activities including: new transfer stations and modified transfer stations; siting of solar photovoltaic arrays on property not containing buried trash nor landfill-related

equipment, but within the boundaries of a designated landfill; and management of certain materials designated as “special wastes.” The second creates authority for MassDEP to require landfill owners/operators to use certified 3rd parties to verify compliance with MassDEP regulations.

- Improved Waste Site Cleanup Program (310 CMR 40.000): This ambitious suite of reforms eliminates the numeric ranking system and the existing waste site permitting processes, and simplifies the “Tier” ranking system, because MassDEP has found that neither the ranking nor the permitting significantly advance the proper assessment and remediation of sites. The proposed changes also streamline the required elements for deed restrictions put in place to limit future use of properties where some amount of residual contamination remains after cleanup (known as “Activity and Use Limitations” or AULs). Also to be included in this package are additional reforms to other important aspects of the Waste Site Cleanup program that were developed *after* the Final Action Plan for Regulatory Reform. (These additional proposed changes to site cleanup program are described in the “Additional Reforms Added Since 2011 Agency-Wide Assessment” section below.)
- General License under Chapter 91/Public Waterfront Act (310 CMR 9.00): These additional changes to the c.91 program propose to establish a general license for non-commercial, small-scale docks, piers and other similar structures. This reform will make it easier for landowners to install such structures, and will also free up MassDEP staff-time by eliminating a relatively low value activity that can be adequately handled at the local level.
- Expedited Wetlands Reviews for Eco-Restoration (310 CMR 10.00): In order to expedite permit review for ecological restoration projects, like stream day-lighting, MassDEP will be proposing additional adjustments to the Wetlands program regulations. The regulations create a general permit which sets forth a standard set of conditions applicable to all of these projects. This will decrease the permitting time and expense that is currently associated with individual, case-by-case permitting for project proponents, municipal conservation commissions, and MassDEP.
- Consolidated Dredging Permitting under Chapter 91, Water Quality Certification and Wetlands (310 CMR 9.00, 314 CMR 9.00, 310 CMR 10.00): Dredging activities can require permits under multiple MassDEP regulatory programs. The proposed change consolidates the permitting requirements under multiple programs and allows a proponent to file a combined application, making the permit process less complex, less redundant, and more efficient.
- Outsourced Reviews and Eliminated Duplication of Title 5 Septic System Oversight (310 CMR 15.000): This proposed change will allow MassDEP to delegate the review of “innovative and alternative” septic system technologies to a certified 3rd party. Additional proposed

changes to the Title 5 Program seek to eliminate MassDEP's approvals for certain septic system situations, such as the approvals needed for variances, holding tanks, and shared systems. Eliminating this MassDEP approval is feasible because the local board of health already issues approvals for these activities applying the same protective standards. MassDEP will retain oversight authority and will be able to review proposals that are novel or have the potential for significant adverse environmental impact.

III. Plan for Additional Reforms Added Since 2011 Agency-Wide Assessment:

The search for streamlining opportunities which resulted in the Final Action Plan for Regulatory Reform [March 2012] involved a review of all regulations under the agency's control. However, since March 2012, MassDEP has identified further promising reform opportunities. The following outlines a handful of important streamlining reforms that were identified and initiated by MassDEP after the completion of the agency-wide assessment and resulting Action Plan for Regulatory Reform. This includes some improvements that could only be achieved via statutory amendment, as well as another batch of reforms requiring regulation changes. The content, status, and path forward for these additional changes follow.

A. Additional Reforms Requiring Targeted Statutory Amendments:

In the spring and early summer of 2012, MassDEP identified additional reforms which could only be achieved by simple, surgical changes to statute. On August 7, 2012, Governor Patrick signed "An Act Relative to Infrastructure Investment, Enhanced Competitiveness, and Economic Growth in the Commonwealth." This Act included four statutory changes that were proposed by MassDEP to further improve the efficiency of the agency's regulatory processes. The streamlining improvements made via statutory changes were:

- Wetlands Protection Act (MGL: c. 131). The 2012 amendments to the Wetlands Protection Act do the following: 1) streamline regulatory requirements for maintenance and repair of sewer lines; 2) simplify abutter notification for long linear projects (like railway maintenance) and certain water-bound or water-abutting projects (such as aquaculture operations); and 3) create a quick process for promulgating the emergency regulations needed for road clearing and debris removal after storm events.
- Clean Water Act (MGL c. 21). The 2012 changes to the Clean Waters Act remove the public notice requirement for permit renewals for a variety of wastewater permit categories in cases where there has been no substantive change to the regulated activity prior to the permit expiration/renewal date.

For more information on the various aspects of the Infrastructure Investment, Enhanced Competitiveness, and Economic Growth Act, see Governor Patrick's press release at:

B. Additional Reforms Requiring Regulation Changes:

The additional reform opportunities identified *after* March 2012 that require regulation changes are summarized below. The draft regulations for each of these reforms will begin public comment in the fall of 2012.

- Expanded Waste Site Cleanup Improvements beyond the March 2012 Action Plan (310 CMR 40.000): There are a number of additional proposed changes to the Waste Site Cleanup program that build on the site cleanup improvements envisioned in March 2012. The most important one resolves an issue that has been a source of considerable concern for developers who have claimed that our current rules impede brownfields development. Under current regulations, a developer cannot close out a site that relies upon an “active system” (e.g. pumps and fans to keep air contaminants outside a building), and this is alleged to create a disincentive to redevelop contaminated sites in locations such as Gateway Cities. The proposed change will allow sites with active, on-going treatment systems to obtain “permanent solution” status via permits that contain treatment system operation and maintenance requirements. The proposed change creates a new status category whereby a site can be classified as having a permanent solution conditionally based on the current use of the property, and it establishes a regulatory mechanism to alert current and future stakeholders to those conditional property uses. This proposal has connections to MassDEP’s ongoing Information Technology redesign, because it will require devices that electronically alert the property owner and ultimately MassDEP if the system ceases to operate. In other words, this is a regulation change that is made possible by advances in information technology systems. This regulation package also simplifies the site status terminology to be more straightforward for responsible parties and more understandable to all stakeholders. There are other improvements included in this package which cover issues associated with properties located on “historic fill,” such as a cleanup approach that is protective of gardening in urban areas and consistent with local “urban agriculture” initiatives. These proposed changes are being combined with the regulation changes envisioned under the March 2012 Action Plan (see above). This is a significant streamlining overhaul of the MCP, and it is both a vote of confidence in -- and an improvement to -- the Commonwealth’s nationally-recognized, semi-privatized waste site cleanup program.
- Surface Water Discharge Permit Notice Simplification (314 CMR 2.0): These regulatory revisions harmonize the state’s public notice requirements for state surface water discharge permits with the federal procedures. The proposed revisions also eliminate public notice in newspapers for other draft state discharge permits (groundwater, reclaimed water, and sewer

connection and extension permits), relying instead on notices in the Environmental Monitor. This results in a more streamlined process for MassDEP and regulated entities, including municipalities. This also aligns well with plans for MassDEP's sweeping improvements to on-line services and web-based access to environmental information.

- Streamlining & Clarifications to c.91, Wetlands, Water Quality Cert (310 CMR 9.0, 314 CMR 9.00, 310 CMR 10.00) Through this package, the Wetlands & Waterways Program proposes to promulgate a collection of regulatory revisions that will achieve various streamlining improvements, and also make some important corrections and provide some key clarifications.
- Presumptive Approvals for Land Application of Sludge & Septage (310 CMR 32.00): Within 310 CMR 32.00, MassDEP is proposing to establish a presumptive approval for renewals of previously-approved permits to land-apply sludge and septage "residuals." The presumptive renewal mechanism will be available for residual materials which have met very high quality standards and are therefore able to be generally applied in Massachusetts. MassDEP is also proposing to increase the maximum term of these approvals from two years to five years. These changes will save time and resources for both applicants and MassDEP without compromising environmental protection standards.

IV. Next Steps/Conclusion:

As described above, all of the streamlining reforms requiring statutory changes are in place, and the bulk of the policy/procedure (non-regulation) reforms will be in place shortly. MassDEP expects to release each of the draft regulation changes for public comment and hearings over the course of October and November 2012. Shortly after the end of calendar year 2012, MassDEP aims to have all final regulation changes in place. (However, the schedule for promulgation of final regulations will be largely dependent on the nature and extent of public comments.)

The Regulatory Reform initiative at MassDEP has been a massive effort for the agency since the spring of 2011. MassDEP's program staff, legal personnel, and senior managers – as well as the many stakeholders from outside the agency -- have dedicated countless hours to this effort, and the agency has made tremendous progress in a relatively short amount of time. This is especially remarkable given the drastic reductions in MassDEP personnel over the last ten years, and the need for the agency to maintain high performance on its important, day-to-day business.

MassDEP believes that the various packages of reforms described above make significant progress streamlining processes and practices for external parties and for agency staff. Many of these reforms will simultaneously achieve greater environmental protection and/or they will enable agency personnel to focus more attention on the highest-priority activities. While the

reforms being implemented in 2012 and 2013 are very substantial, MassDEP will continue to be keenly interested in additional regulatory streamlining opportunities. The agency takes very seriously its commitment to continuous improvement and on-going efficiencies.